

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JAN 1 1975

AX
Richard Johnson, EG-335
Regional Administrator, Region V
Regional Enforcement Director, Region V

Dear Mr. Sendak:

I want to take this opportunity to thank you for your personal participation in the November 26, 1974, public hearing held to consider Indiana's application to administer the National Pollutant Discharge Elimination System (NPDES) permit program. I applaud the commitment of you and your staff to provide appropriate and timely enforcement of each violation of the Federal and State statutes, regulations and the individual discharger permits.

Enclosed please find a copy of my letter to Governor Bowen notifying him of our approval of Indiana's application. Though I feel that the State's program has a firm legal foundation, the public hearing raised certain issues which will receive much of our attention in the coming months. It is with appreciation of the statutory nature of the Office of Attorney General that I perceive the need for the deepest strengths between our offices.

This Agency is pledged to the goals that were so well articulated at the hearing: "An appropriate and timely enforcement remedy for every violation." We understand that you can only proceed where a case referral has been made. Where we can be of assistance or where it is determined that such enforcement action is not timely or inappropriate, you may rely on this Agency to use all its powers under the Act.

With a cooperative effort between our offices, I am sure we will continue the progress toward cleaner waters in Indiana.

Sincerely yours,

/s/ John Quarles, Deputy
for Russell E. Train

Honorable Theodore Sendak
Attorney General
Indianapolis, Indiana 46204

Prepared by: Region V/dwk/12-23/74
bcc: OEGC Chron & Reading Files
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CONCURRENCES

SYMBOL	EG-338	Enclosure	46W	KIRK	AC				
SURNAME	Brown	John							
DATE	12/23/74	12/24/74	12-24	12/24					

MEMORANDUM OF AGREEMENT
BETWEEN THE
INDIANA STREAM POLLUTION CONTROL BOARD
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V

INTRODUCTION

The Environmental Protection Agency (EPA) Guidelines for State program elements necessary for participation in the National Pollutant Discharge Elimination System (NPDES), 40 CFR 124, prepared pursuant to the authority contained in Section 304 (h) (2) of the Federal Water Pollution Control Act Amendments of 1972 (referred to herein as the Federal Act) were published in the Federal Register on December 22, 1972. Various sections of the Guidelines permit the Chief Administrative Officer of a State water pollution control agency and the Regional Administrator of EPA to reach agreement on the manner in which the 40 CFR Guidelines are to be implemented.

To satisfy the requirements of the Guidelines, the following procedures are hereby agreed to by the Indiana Stream Pollution Control Board (referred to herein as the Board) and the Technical Secretary (referred to herein as the Director) and the Regional Administrator.

The sections and subsections of 40 CFR 124 related to these agreements are: 124.22, 124.23, 124.35 (b), 124.35 (c), 124.41 (c), 124.44 (d), 124.46, 124.47, 124.61 (b), 124.62 (c), 124.71 (c), 124.72 (b), 124.73 (b) (2), and 124.80 (d). The terms used in this Memorandum of Agreement have the same meaning as those used and defined in 40 CFR 124.1.

I. SECTION 124.22 RECEIPT AND USE OF FEDERAL DATA

- A. The two purposes of this part of the agreement are: (1) to provide for the transfer of data bearing on NPDES permit determinations from the EPA to the State of Indiana, Stream Pollution Control Board and (2) to insure that any deficiencies in the transferred NPDES application will be corrected prior to issuance of an NPDES permit.
- B. Commencing immediately after the effective date of this agreement, the Regional Administrator will transmit to the Director a list of all NPDES permit applications received by EPA. This list will include the name of each discharger, SIC Code, application number and indicate whether EPA has determined which applications are complete.
- C. After receipt of the list, the Director will identify the priority order to be used by EPA to transmit the application files to him. The application file will include the NPDES permit application and any other pertinent data collected by EPA. The application files will be transmitted to the Director according to the priority order identified, and EPA will retain one copy of each file transmitted to the Director.

- D. For an application identified as not complete by EPA, the Director will obtain the necessary information from the discharger and correct the application. The Director, at his discretion, may also obtain additional information for those applications identified by EPA as complete to update or process the application.
- E. Once the Director determines that an application is complete, he will transmit two (2) copies of the completed application and a cover letter indicating that the application has been determined to be completed to the Regional Administrator, Attention: Permit Branch. If EPA concurs that the application is complete, one copy will be routed to the Regional Data Management Section, Surveillance and Analysis Division, through the compliance Section, Enforcement Division, for processing into the National Data Bank and the other copy will be placed in the NPDES Permit Branch file.
- F. The Director will be advised by letter that the Regional NPDES Permit Branch concurs with his determination and that a copy of the application has been transmitted to the Data Management Section. If EPA determines that the application is not complete, the Regional NPDES Permit Branch will identify the deficiencies by letter to the Director.
- G. No NPDES Permit will be issued by the Director until all deficiencies identified by the U. S. EPA are corrected and the Director receives a letter from EPA certifying that the application is complete.
- H. Thirty days after receipt of notification by the U. S. EPA that the NPDES compliance monitoring sub-systems of the General Point Source File (GPSF) are operational, the ISPCB shall initiate the transfer of all NPDES compliance monitoring information into GPSF or begin interface with GPSF through conversion programs or other means. This transfer or interface will be completed in the shortest feasible time after initiation. Continuing information, especially regular NPDES permittee compliance reports, will be transferred or interfaced with GPSF as soon as possible after receipt.

II. SECTION 124.23 TRANSMISSION OF DATA TO REGIONAL ADMINISTRATOR

- A. The Director will transmit to the Regional Administrator copies of NPDES application forms submitted by the applicant to the State. When the State determines that the NPDES forms received from the discharger are complete, two (2) copies of the forms with a cover letter indicating that the forms are complete will be transmitted to the Regional Administrator, Attention: Permit Branch. If EPA concurs with the Director, one (1) copy will be routed to the Regional Data Management Section, Surveillance and Analysis Division, through the Compliance Section, Enforcement Division for processing into the National Data Bank and the other copy will be placed in the Regional NPDES Permit Branch file. The Director will be advised by letter that EPA concurs with his determination and that a copy of the application has been transferred to the U. S. EPA Regional Data Management Section.* If EPA determines that the application is not complete, the deficiencies will be identified by letter to the Director. No NPDES permit will be issued by the Director until the deficiencies are corrected and he has been advised in writing by EPA that the application is complete.

* The State may input directly into the National Data Bank subject to

prior approval of procedures by the NPDES Permit Branch and Data Management Section.

- B. Upon receiving an NPDES application short form from the Director, the Regional Administrator may identify the discharge as one for which an NPDES standard form shall be submitted and shall notify the Director. The Director will require the applicant to submit a standard NPDES application form or any other information requested by the Regional Administrator.
- C. When requested by the Regional Administrator, the Director will transmit copies of notice received by him from publicly-owned treatment works pursuant to 40 CFR 124.45 (d) and (e) within 15 days of receipt of the request.
- D. The Regional Administrator may waive his rights to receive copies of NPDES application short forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular navigable waters or parts thereof. Such written waiver must be issued by the Regional Administrator before the Director can discontinue transmitting to EPA copies of NPDES application short forms.

III. 124.35 (b) and (c) PUBLIC ACCESS TO INFORMATION

- A. The Director will protect any information (other than effluent data) contained in such NPDES form, or other records, reports or plans as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of that person. If however, the information being considered for confidential treatment is contained in an NPDES form, the Director will forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection, he will request advice from the Office of General Counsel stating the reasons for his disagreement with the determination of the Director. The Regional Administrator will simultaneously provide a copy of the request to the person claiming trade secrecy. The General Counsel will determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he will consider any additional information submitted to the Office of General Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets, he will so advise the Regional Administrator and will notify the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the mailing of such notice, the Regional Administrator will communicate to the Director his decision not to concur in the withholding of such information, and the Director and the Regional Administrator will then make available to the public upon request, that information determined not to constitute trade secrets, unless an appeal is made to EPA by the person claiming trade secrecy. Following an appeal, the determination made by EPA will be conclusive unless reviewed in an appropriate district court of the United States.
- B. Any information accorded confidential status, whether or not contained in an NPDES form, will be disclosed by the Director, upon written

request, therefore, to the Regional Administrator, or his authorized representative, who will maintain the disclosed information as confidential. Further, such information may be disclosed when relevant in any proceeding related to enforcement.

IV. 124.41 (c) DRAFT PERMIT OBJECTIONS

The Director will not issue an NPDES permit for a discharge to which the Regional Administrator has objected in writing pursuant to any right to object provided in Section 402 (d) of the Federal Act. The Regional Administrator will notify the Director in writing of any objections he has within 90 days of receipt of a copy of a permit application. The resolution by the Board of these objections will be communicated in writing by the Director to the Regional Administrator, and no permit will be issued before written approval of such resolution by the Regional Administrator is received by the Director.

V. 124.44 (d) COMPLIANCE SCHEDULE REPORTS

On the last day of the months of February, May, August, and November the Director will transmit to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of an NPDES permittee to comply with an interim or final requirement or to notify the Director of compliance or noncompliance with each interim or final requirement (as required pursuant to paragraph, 40 CFR 124.44 (b)). The list will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of non-compliance:

- (1) The name and address of each noncomplying NPDES permittee;
- (2) A short description of each instance of noncompliance (e.g. failure to submit preliminary plans, 2-week delay in commencement of construction of treatment facility, failure to notify the Director of compliance with an interim requirement to complete construction by June 30, etc). The short description of each instance of noncompliance should include a list of all:
 - a. Violations of effluent limitations.
 - b. Violations of compliance schedules.
 - c. Violations of monitoring and/or reporting requirements.
 - d. Violations of any other NPDES permit conditions;
- (3) A short description and corresponding date of any action or proposed action by the permittee or the Director to comply or enforce compliance with an interim or final requirement; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g. construction delayed due to materials shortage, plan approval delayed by objections from State Fish and Wildlife Agency).

VI. SECTION 124.46 TRANSMISSION TO REGIONAL ADMINISTRATOR OF PROPOSED NPDES PERMITS

- A. At the time a public notice required by 40 CFR 124.32 is issued, the Director will transmit one copy of the NPDES public notice, fact sheets, proposed NPDES permit and a list of all persons receiving the the public notice, fact sheets and proposed NPDES permit, together with a description of any other procedure used to circulate the public

notice, to the Regional Administrator, Attention: NPDES Permit Branch. The information transmitted with the proposed permit will include any and all terms, conditions, requirements, or documents which are part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants.

- B. After a Public Notice period has expired, the Director will consider all comments received as a result of the Public Notice and may modify the proposed NPDES permit as it considers appropriate. Public hearings may be held as provided for in 40 CFR 124.36. If a public hearing is held, the Director will consider all comments and may modify the proposed NPDES permit as it considers appropriate. If a public hearing is requested and should the Director decide not to hold a public hearing, he will provide the Regional Administrator and all parties requesting the hearing, a written explanation of why the hearing was not held before submitting the proposed NPDES permit to the Regional Administrator for approval.
- C. If a proposed NPDES permit issued with a public notice is modified as a result of the Public Notice or Public hearing, revised copy of the proposed NPDES permit will be transmitted to the Regional Administrator, Attention: NPDES Permit Branch, together with a copy of all statements received from the public notice, and where a public hearing is held, a summary of all objections with a request for approval to issue the NPDES permit. In lieu of a summary, the Director may provide a verbatim transcript of the entire public hearing.
- D. When a proposed NPDES permit is not revised after a public notice or, if held, a public hearing, the Director will notify the Regional Administrator, Attention: NPDES Permit Branch, by letter that the proposed NPDES permit issued with the public notice has not been revised and request approval to issue the NPDES permit. The request for approval will include a copy of all written statements received from the public notice.
- E. The Regional Administrator will be provided 20 days from the time the letter requesting approval specified in either paragraph C or D above is received in which the Regional Administrator, pursuant to any right to object provided in Section 402 (d) (2) of the Federal Act, may comment upon or object to and make recommendations with respect to the proposed NPDES permit. During this time, the Regional Administrator may request up to an additional 40 days for review of any permit submitted pursuant to paragraph VI C. If no comment is received by the Director within 20 days, he will assume that EPA has no objection to NPDES permit issuance.
- F. No NPDES permit will be issued by the Director until it receives a letter from the Regional Administrator or his designee approving the issuance of the NPDES permit under Section 402 (b) of the Federal Act, or if no comment is received by the Director from EPA within 20 days as provided in E above.
- G. The Regional Administrator may waive his rights to receive, review object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. Such written waiver must be issued by the Regional Administrator before the Director can issue an NPDES permit without EPA approval.

VII. 124.47 TRANSMISSION TO REGIONAL ADMINISTRATOR OF ISSUED NPDES PERMITS

- A. The Director will transmit to the Regional Administrator two (2) copies of every issued NPDES permit, Attention: NPDES Permit Branch, together with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants.
- B. The Director will transmit the above information at the same time the NPDES permit is issued by the Director to the applicant together with a copy of the Director's letter to the applicant forwarding the NPDES permit.

VIII. 124.61 (b) MONITORING

- A. Permit conditions issued by the Director for any discharge authorized by an NPDES permit which (1) is not a minor discharge, (2) the Regional Administrator requests, in writing, be monitored, or (3) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to Section 307 (a) of the Federal Act, will require monitoring by the permittee for at least the following:
 - (i) Flow (in gallons per day); and
 - (ii) All of the following pollutants:
 - (a) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permits;
 - (b) Pollutants which the Director finds, on the basis of information available to him, could have a significant impact on the quality of navigable waters;
 - (c) Pollutants specified by the Administrator, in regulations issued pursuant to the Federal Act, as subject to monitoring; and
 - (d) Any pollutants in addition to the above which the Regional Administrator requests, in writing be monitored.
- B. The Regional Administrator may make the request specified in A (2) and A (3) (ii) (d).
- C. The Director will transmit to the Regional Administrator data submitted by NPDES permittees on self-monitoring reporting forms, either by (1) forwarding copies of the reporting forms to the Regional Administrator, Attention: Compliance Section, Enforcement Division, or (2) by direct entry into the General Point Source File data system.

D. At the time of transfer of permanent authority, the Director shall formulate and continually update a list of all other permittees for which effluent monitoring data will be forwarded monthly. The Director will transmit on the last day of the months of February, May, August and November to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all instances as of 30 days prior to the date of such report, of all violations of effluent limitations indicated by self-monitoring reports. These lists will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of noncompliance:

- (1) The name and address of each noncomplying NPDES permittee;
- (2) The effluent limitations exceeded;
- (3) Any action or proposed actions by the NPDES permittee or the Director to comply or enforce compliance with the effluent limitations; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance.

IX. 124.62 (c) MONITORING RESULTS

During the period of a permit, upon request of the Regional Administrator, the Director shall notify and require the permittee to extend the normal 3 year retention of monitoring records under 40 CFR 124.62 (c).

X. 124.71 (c) RECEIPT AND FOLLOW-UP OF NOTIFICATIONS AND REQUESTS

If the Director determines that a condition of a permit to a publicly owned treatment works relating to a new introduction or changes in the volume or character of pollutants introduced into such treatment works is violated, he shall notify the Regional Administrator in writing and consider taking action under Section 402 (h) of the Federal Act relating to proceedings to restrict or prohibit the introduction of pollutants into treatment works.

XI. 124.72 (b) MODIFICATION, SUSPENSION AND REVOCATION OF NPDES PERMITS

- A. If an issued NPDES permit is subsequently revised or modified, the Director shall notify the Regional Administrator of such revisions, modification and shall provide the Regional Administrator up to 45 days in which to comment or object and make recommendations to the Director. The Regional Administrator shall respond no later than 20 days from receipt and may request additional time not to exceed an overall total of 45 days.
- B. If the Director, upon request of the permittee, decides to revise or modify a schedule of compliance for good cause, he shall notify the Regional Administrator in writing and, if no written objection is received from the Regional Administrator within 30 days of receipt of the notice, he shall deem it approved. Any such revision or modification of schedule of compliance shall be included in proper time on the list submitted under Paragraph V of this Agreement.

XII. 124.73 (b) (2) EMERGENCY NOTIFICATION

The Director or his authorized representative will notify the Regional Administrator by telephone as soon as he is notified of any actual or threatened endangerments to the health or welfare of persons resulting from the discharge of pollutants. The Director or his authorized representative will utilize the telephone numbers identified in the current Regional Oil and Hazardous Materials Contingency Plan to notify the Regional Administrator. Telephone contact may be made with either the District Offices or the Regional Offices, as the Director determines appropriate.

XIII. 124.80 (d) CONTROL OF DISPOSAL OF POLLUTANTS INTO WELLS

The Regional Administrator shall transmit to the Director any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the Act or in directives issued to Environmental Protection Agency regional offices.

XIV. OTHER ITEMS

- A. Attached hereto is a list of the major industrial and municipal dischargers in Indiana. It is assumed that U.S. EPA will issue these permits by December 31, 1974. However, in the event that certain of these permits remain unissued, the Indiana Stream Pollution Control Board will give highest priority to the processing and issuance of the remaining major discharger permits. Also attached is a list of minor municipal, industrial, and semi-public dischargers which to date have not been processed. (Attachment IIA) These lists represent all remaining dischargers in the State of Indiana to be processed. The State also commits itself to issuance of all permits by June 30, 1975. The dischargers listed in water quality segments will receive first priority in processing.
- B. The Memorandum of Agreement may be modified by the Director and the Regional Administrator following the public hearing to evaluate the States Section 402 (b) program submittal on the basis of issues raised at the hearing. The hearing record will be left open for a period of 5 days following the hearing to permit any person to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing. Any revisions of agreements following the public hearing will be finalized, reduced to writing and signed by the Director and the Regional Administrator prior to forwarding of the recommendations of the Regional Administrator to the Administrator of EPA for review and approval. The Director and Regional Administrator will make any such revised agreements available to the public for inspection and copying.
- C. No later than 120 days from the effective date of this Agreement, the Regional Administrator shall consider whether to waive his right to receive, review, object to or comment upon proposed NPDES permits and NPDES forms. He shall promptly notify the Director of his decision.

- D. The Regional Administrator, as well as the Director, may identify a particular discharge composed entirely of storm runoff when uncontaminated by any industrial or commercial activity, as a significant contributor of pollution requiring an NPDES permit.
- E. All agreements between the State of Indiana and the Regional Administrator are subject to review by the Administrator of EPA. If the Administrator of EPA determines that any provisions of such agreements do not conform to the requirements of Section 402 (b) of the Federal Act or to the requirements of the Section 304 (h) (2) Guidelines, he will notify the State and the Regional Administrator of any revisions or modifications which must be made in the written agreements.
- F. This Memorandum of Agreement will take effect upon program approval by the Administrator of EPA pursuant to Section 402 (b) of the Federal Water Pollution Control Act Amendments of 1972.

This Memorandum shall remain in effect for the duration of such approved program or until the Memorandum is rescinded by mutual agreement of the parties. This Memorandum may be modified from time to time as the parties may agree in order to simplify the procedures and refine the methods contained herein.

Indiana Stream Pollution Control Board

by

U. S. Environmental Protection Agency
Region V
by

Oral H. Hert
Oral H. Hert
Technical Secretary

Nov 7, 1974
Date

/s/ John Charles
Russell E. Train
Administrator

Francis T. Mayo
Francis T. Mayo
Regional Administrator

11/19/74
Date

DEC 30 1974
Date